

108TH CONGRESS  
1ST SESSION

# H. R. 2693

To reauthorize the Marine Mammal Protection Act of 1972, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 10, 2003

Mr. GILCHREST (for himself and Mr. POMBO) introduced the following bill;  
which was referred to the Committee on Resources

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## A BILL

To reauthorize the Marine Mammal Protection Act of 1972,  
and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Marine Mammal Pro-  
5       tection Act Amendments of 2003”.

6       **SEC. 2. AMENDMENT REFERENCES.**

7       Except as otherwise expressly provided, whenever in  
8       this Act an amendment or repeal is expressed in terms  
9       of an amendment to, or repeal of, a section or other provi-  
10      sion, the reference shall be considered to be made to such

1 section or other provision of the Marine Mammal Protec-  
 2 tion Act of 1972 (16 U.S.C. 1361 et seq.).

3 **SEC. 3. TECHNICAL CORRECTIONS.**

4 (a) COMMITTEE REFERENCES.—The Marine Mam-  
 5 mal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is  
 6 amended by striking “Committee on Merchant Marine and  
 7 Fisheries” each place it appears and inserting “Committee  
 8 on Resources”.

9 (b) OBSOLETE REFERENCE TO REPLACED SEC-  
 10 TION.—Section 118(c)(3)(A)(i) (16 U.S.C.  
 11 1387(c)(3)(A)(i)) is amended by striking “, except that”  
 12 and all that follows through “is valid”.

13 **SEC. 4. LIMITED AUTHORITY TO EXPORT MARINE MAMMAL**  
 14 **PRODUCTS.**

15 Section 101(a)(6) (16 U.S.C. 1371(a)(6)) is amended  
 16 by redesignating subparagraph (B) as subparagraph (C),  
 17 and by inserting after subparagraph (A) the following:

18 “(B) A marine mammal product may be exported  
 19 from the United States if the product—

20 “(i) is legally possessed, and exported by, a cit-  
 21 izen of the United States in conjunction with travel  
 22 outside the United States;

23 “(ii) is legally possessed and exported as part of  
 24 a cultural exchange, by an Indian, Aleut, or Eskimo  
 25 residing in Alaska; or

1 “(iii) is owned by a Native inhabitant of Russia,  
 2 Canada, or Greenland and is exported for non-  
 3 commercial purposes—

4 “(I) in conjunction with, and upon the  
 5 completion of, travel within the United States;  
 6 or

7 “(II) as part of a cultural exchange with  
 8 an Indian, Aleut, or Eskimo residing in Alas-  
 9 ka.”.

10 **SEC. 5. MISCELLANEOUS AUTHORIZATIONS OF APPROPRIA-**  
 11 **TIONS.**

12 (a) DEPARTMENT OF COMMERCE.—Section 116(a)  
 13 (16 U.S.C. 1384(a)) is amended to read as follows:

14 “(a) DEPARTMENT OF COMMERCE.—(1) There are  
 15 authorized to be appropriated to the Department of Com-  
 16 merce, for purposes of carrying out its functions and re-  
 17 sponsibilities under this title (other than sections 117 and  
 18 118) and title IV—

19 “(A) \$16,615,000 for 2004;

20 “(B) \$17,280,000 for 2005;

21 “(C) \$17,971,000 for 2006;

22 “(D) \$18,670,000 for 2007; and

23 “(E) \$19,418,000 for 2008.

24 “(2) There are authorized to be appropriated to the  
 25 Department of Commerce, for purposes of carrying out

1 sections 117 and 118, \$20,000,000 for each of the fiscal  
 2 years 2004 through 2008.”.

3 (b) DEPARTMENT OF THE INTERIOR.—Section  
 4 116(b) (16 U.S.C. 1384(b)) is amended to read as follows:

5 “(b) DEPARTMENT OF THE INTERIOR.—There are  
 6 authorized to be appropriated to the Department of the  
 7 Interior, for purposes of carrying out its functions and re-  
 8 sponsibilities under this title—

9 “(1) \$11,800,000 for 2004;

10 “(2) \$12,300,000 for 2005;

11 “(3) \$12,800,000 for 2006;

12 “(4) \$13,300,000 for 2007; and

13 “(5) \$13,800,000 for 2008.”.

14 (c) COOPERATIVE AGREEMENTS IN ALASKA.—Sec-  
 15 tion 119(d) (16 U.S.C. 1388(d)) is amended by striking  
 16 paragraphs (1) and (2) and inserting the following:

17 “(1) \$2,000,000 to the Secretary of Commerce  
 18 for each of fiscal years 2004 through 2008; and

19 “(2) \$1,500,000 to the Secretary of the Interior  
 20 for each of fiscal years 2004 through 2008.”.

21 **SEC. 6. TAKE REDUCTION PLANS.**

22 Section 118 (16 U.S.C. 1387) is amended as follows:

23 (1) In subsection (a) by striking “commercial”  
 24 each place it appears in paragraphs (1) and (5).

1           (2) In subsection (c)(1) by striking so much as  
2 precedes subparagraph (B) and inserting the fol-  
3 lowing:

4           “(c) REGISTRATION AND AUTHORIZATION.—(1) The  
5 Secretary shall, within 90 days after the date of enactment  
6 of the Marine Mammal Protection Act Amendments of  
7 2003—

8           “(A) publish in the Federal Register for public  
9 comment, for a period of not less than 90 days, any  
10 necessary changes to the Secretary’s list of fisheries  
11 published under section 114(b)(1) in the Federal  
12 Register on August 24, 1994 (along with an expla-  
13 nation of such changes and a statement describing  
14 the marine mammal stocks interacting with, and the  
15 approximate number of vessels or persons actively  
16 involved in, each such fishery), with respect to—

17           (i) fisheries that have frequent incidental  
18 mortality and serious injury of marine mam-  
19 mals;

20           (ii) fisheries that have occasional incidental  
21 mortality and serious injury of marine mam-  
22 mals; or

23           (iii) commercial fisheries that have a re-  
24 mote likelihood of or no known incidental mor-  
25 tality or serious injury of marine mammals;”.

1           (3) In subsection (c)(1) in subparagraphs (B)  
2           and (C) by striking “commercial”.

3           (4) In subsection (c)(2)(A) by striking “com-  
4           mercial”.

5           (5) In subsection (c)(3)(A)—

6                 (A) in the matter preceding clause (i) by  
7                 striking “a commercial fishery” and inserting  
8                 “that fishery”; and

9                 (B) in clause (i) by striking “this section,”  
10                and all that follows through the semicolon and  
11                inserting “this section;”.

12           (6) In subsection (c)(5)(B) by striking “com-  
13           mercial”.

14           (7) In subsection (d)(1) in the matter preceding  
15           subparagraph (A) by striking “commercial fishing  
16           operations” and inserting “fishing operations in a  
17           fishery listed under subsection (c)(1)(A)(i) or (ii)”.

18           (8) In subsection (d)(3) in the matter preceding  
19           subparagraph (A) by striking “commercial fisheries”  
20           and inserting “fisheries listed under subsection  
21           (c)(1)(A)(i) or (ii)”.

22           (9) In subsection (d)(4) as follows:

23                 (A) In the matter preceding subparagraph

24                 (A) by striking “commercial fisheries” and in-

1           serting “fisheries listed under subsection  
2           (c)(1)(A)(i) or (ii)”.

3           (B) In subparagraph (A) by striking “com-  
4           mercial fisheries” and inserting “fisheries listed  
5           under subsection (c)(1)(A)(i) or (ii)”.

6           (C) In subparagraph (B) by striking “com-  
7           mercial fisheries” and inserting “fisheries listed  
8           under subsection (c)(1)(A)(i) or (ii)”.

9           (10) In subsection (d)(5) by striking “commer-  
10          cial fishing operations” and inserting “fishing oper-  
11          ations in fisheries listed under subsection  
12          (c)(1)(A)(i) or (ii)”.

13          (11) In subsection (e) in the matter preceding  
14          paragraph (1)—

15               (A) by striking “commercial” each place it  
16               appears; and

17               (B) by striking “this Act” and inserting  
18               “this section”.

19          (12) In subsection (f)(1) by striking “commer-  
20          cial” each place it appears.

21          (13) In subsection (f)(2)—

22               (A) by striking “6 months” and inserting  
23               “9 months”; and

24               (B) by striking “commercial fishing oper-  
25          ations” each place it appears and inserting

1 “fishing operations in fisheries listed under sub-  
2 section (c)(1)(A)(i) or (ii)”.

3 (14) In subsection (f)(3) by striking “commer-  
4 cial”.

5 (15) In subsection (f)(4)(B) by striking “com-  
6 mercial fishing operations” and inserting “fishing  
7 operations in fisheries listed under subsection  
8 (c)(1)(A)(i) or (ii)”.

9 (16) In subsection (f)(5)—

10 (A) in subparagraph (A) by striking “6  
11 months” and inserting “9 months”; and

12 (B) in subparagraphs (A) and (B) by  
13 striking “commercial” each place it appears.

14 (17) In subsection (f)(6)(A)—

15 (A) by striking “(not later than 30 days)”;  
16 and

17 (B) in clause (ii) by striking “commercial  
18 fisheries” and inserting “fisheries listed under  
19 subsection (c)(1)(A)(i) or (ii)”.

20 (18) In subsection (f)(6)(C) in the second sen-  
21 tence, by inserting before the period the following: “,  
22 a representative of the office of General Counsel of  
23 the National Oceanic and Atmospheric Administra-  
24 tion, a representative of the National Marine Fish-  
25 eries Service having responsibilities related to fish-



1       eries science, a representative of the National Ma-  
2       rine Fisheries Service having responsibilities related  
3       to law enforcement, and a representative of the ap-  
4       propriate National Marine Fisheries Service Re-  
5       gional Administrator”.

6           (19) In subsection (f)(7)—

7                (A) in subparagraph (A)(i) by striking “6  
8       months” and inserting “9 months”;

9                (B) in subparagraph (B)(i)—

10                   (i) by striking “not later than 60  
11       days” and inserting “not later than 180  
12       days”; and

13                   (ii) by adding at the end the fol-  
14       lowing: “Before publishing any plan that is  
15       different than the draft plan proposed by  
16       a take reduction team, the Secretary shall  
17       reconvene the team and explain to the  
18       team the differences between the published  
19       plan and the draft plan proposed by the  
20       team.”; and

21                (C) in subparagraph (B)(ii)—

22                   (i) by striking “6 months” and insert-  
23       ing “9 months”; and

1                   (ii) by striking “not later than 8  
2                   months” and inserting “not later than 11  
3                   months”.

4           (20) In subsection (f)(7)(C) by striking “Not  
5           later than 60 days” and inserting “Not later than  
6           180 days”.

7           (21) In subsection (f)(7)(D) by striking “com-  
8           mercial”.

9           (22) In subsection (f)(8)—

10                   (A) in subparagraph (C) by striking “Not  
11                   later than 60 days” and inserting “Not later  
12                   than 180 days”; and

13                   (B) by striking “commercial” each place it  
14                   appears.

15           (23) In subsection (f)(9) as follows:

16                   (A) In subparagraph (A) by striking “com-  
17                   mercial fisheries or restrict commercial fish-  
18                   eries” and inserting “fisheries listed under sub-  
19                   section (c)(1)(A)(i) or (ii) or restrict such fish-  
20                   eries”.

21                   (B) In subparagraphs (B) and (C) by  
22                   striking “commercial” each place it appears.

23                   (C) In subparagraph (D) by striking “com-  
24                   mercial fishing operations” and inserting “par-

1           ticipation in a fishery listed under subsection  
2           (c)(1)(A)(i) or (ii)”.

3           (24) In subsection (g)(1) by striking “commer-  
4           cial fisheries” and inserting “fisheries listed under  
5           subsection (c)(1)(A)(i) or (ii)”.

6           (25) In subsection (g)(3)(B) by striking “com-  
7           mercial”.

8           (26) In subsection (g)(4) by striking “commer-  
9           cial fishery” and inserting “fishery listed under sub-  
10          section (c)(1)(A)(i) or (ii)”.

11          (27) In subsection (j) by inserting “including  
12          observer, research, and education and outreach pro-  
13          grams,” after “For purposes of carrying out this  
14          section,”.

15   **SEC. 7. PINNIPED RESEARCH.**

16          Section 120 (16 U.S.C. 1389) is amended by adding  
17          at the end the following:

18          “(k) RESEARCH ON NONLETHAL REMOVAL AND  
19          CONTROL.—(1) The Secretary shall conduct research on  
20          the nonlethal removal and control of nuisance pinnipeds.  
21          The research shall include a review of measures that have  
22          been taken to effect such removal and control, the effec-  
23          tiveness of these measures, and the development of new  
24          technologies to deter nuisance pinnipeds.

1       “(2) The Secretary shall include, among the individ-  
2 uals that develop the research program under this sub-  
3 section, representatives of the commercial and recreational  
4 fishing industries.

5       “(3) The Secretary is encouraged, where appropriate,  
6 to use independent marine mammal research institutions  
7 in developing and in conducting the research program.

8       “(4) The Secretary shall, by December 31 of each  
9 year, submit an annual report on the results of research  
10 under this subsection to the Committee on Resources of  
11 the House of Representatives and the Committee on Com-  
12 merce, Science, and Transportation of the Senate.”.

13 **SEC. 8. MARINE MAMMAL COMMISSION.**

14       (a) NUMBER OF EMPLOYEES.—Section 206(5) (16  
15 U.S.C. 1406(5)) is amended by striking “; except that no  
16 fewer than 11 employees must be employed under para-  
17 graph (1) at any time”.

18       (b) ADMINISTRATION.—Section 206(4) (16 U.S.C.  
19 1406(4)) is amended by striking “(but at rates for individ-  
20 uals not to exceed \$100 per diem)”.

21       (c) AUTHORIZATION OF APPROPRIATIONS.—Section  
22 207 (16 U.S.C. 1407) is amended to read as follows:

1 **“SEC. 207. AUTHORIZATION OF APPROPRIATIONS.**

2 “There are authorized to be appropriated to the Ma-  
3 rine Mammal Commission for purposes of carrying out  
4 this title—

5 “(1) \$2,000,000 for fiscal year 2004;

6 “(2) \$2,050,000 for fiscal year 2005;

7 “(3) \$2,100,000 for fiscal year 2006;

8 “(4) \$2,150,000 for fiscal year 2007; and

9 “(5) \$2,200,000 for fiscal year 2008.”.

10 **SEC. 9. SCRIMSHAW EXEMPTION.**

11 Any valid certificate of exemption referred to in sec-  
12 tion 18 of Public Law 103–238 (16 U.S.C. 1539 note)  
13 that was valid under that section on April 29, 1999, shall  
14 be valid during the 8-year period beginning October 31,  
15 1999.

16 **SEC. 10. POLAR BEAR PERMITS.**

17 Section 104 (16 U.S.C. 1374) is amended—

18 (1) in subsection (c)(5)(D) by striking “the  
19 date of the enactment of the Marine Mammal Pro-  
20 tection Act Amendments of 1994” and inserting  
21 “February 18, 1997”;

22 (2) in subsection (d)(2) by inserting before the  
23 period at the end of the first sentence the following:  
24 “, except for an application for a permit to import  
25 polar bear parts under subsection (c)(5)”;

1           (3) in subsection (d)(5) by inserting before the  
2           period at the end of the last sentence the following:  
3           “if a notice of application was published pursuant to  
4           paragraph (2) with respect to the permit”; and

5           (4) in subsection (e)(5) by adding at the end  
6           the following:

7           “(E) The Secretary shall make available to the public  
8           on a semiannual basis information concerning the permits  
9           issued or denied under this paragraph.”.

10 **SEC. 11. CAPTIVE RELEASE PROHIBITION.**

11           Section 102(a) (16 U.S.C. 1372(a)) is amended—

12           (1) in paragraph (4) by striking “subsection  
13           104(c); and” and inserting “section 104(c);”;

14           (2) in paragraph (5) by striking the period and  
15           inserting “; and”; and

16           (3) by adding at the end the following:

17           “(6) for any person that is subject to the juris-  
18           diction of the United States to release any captive  
19           marine mammal unless specifically authorized to do  
20           so under section 104(c)(3)(A), 104(c)(4)(A), or  
21           109(h).”.

22 **SEC. 12. STRANDING AND ENTANGLEMENT RESPONSE.**

23           (a) COLLECTION AND UPDATING OF INFORMA-  
24           TION.—Section 402(b)(1)(A) (16 U.S.C. 1421a(b)(1)(A))  
25           is amended by inserting “or entangled” after “stranding”.

1 (b) ENTANGLEMENT RESPONSE AGREEMENTS.—

2 (1) IN GENERAL.—Section 403 (16 U.S.C.  
3 1421b) is amended—

4 (A) by amending the section heading to  
5 read as follows:

6 **“SEC. 403. STRANDING OR ENTANGLEMENT RESPONSE**  
7 **AGREEMENTS.”**; and

8 (B) in subsection (a) by inserting “or en-  
9 tanglement” before the period.

10 (2) CLERICAL AMENDMENT.—The table of con-  
11 tents at the end of the first section is amended by  
12 striking the item relating to section 403 and insert-  
13 ing the following:

“Sec. 403. Stranding or entanglement response agreements.”.

14 (c) LIABILITY.—Section 406(a) (16 U.S.C. 1421e(a))  
15 is amended by inserting “or entanglement” after “strand-  
16 ing”.

17 (d) ENTANGLEMENT DEFINED.—

18 (1) IN GENERAL.—Section 410 (16 U.S.C.  
19 1421h) is amended—

20 (A) by redesignating paragraphs (1)  
21 through (6) in order as paragraphs (2) through  
22 (7); and

23 (B) by inserting before paragraph (2) (as  
24 so redesignated) the following:

1 “(1) The term ‘entanglement’ means an event  
 2 in the wild in which a living or dead marine mammal  
 3 has gear, rope, line, net, or other material wrapped  
 4 around or attached to it and is—

5 “(A) on a beach or shore of the United  
 6 States; or

7 “(B) in waters under the jurisdiction of  
 8 the United States.”.

9 (2) CONFORMING AMENDMENT.—Section  
 10 408(a)(2)(B)(i) (16 U.S.C. 1421f–1)(a)(2)(B)(i)) is  
 11 amended by striking “section 410(6)” and inserting  
 12 “section 410(7)”.

13 (e) AUTHORIZATIONS OF APPROPRIATIONS.—

14 (1) GRANT PROGRAM.—Section 408(h) (16  
 15 U.S.C. 1421f–1(h)) is amended by striking “fiscal  
 16 years 2001 through 2003” and inserting “fiscal  
 17 years 2004 through 2008”.

18 (2) FUND.—Section 409(3) (16 U.S.C.  
 19 1421g(3)) is amended by striking “\$500,000 for fis-  
 20 cal year 1993” and inserting “\$125,000 for each of  
 21 fiscal years 2004 through 2008”.

22 **SEC. 13. DEFINITION OF HARASSMENT.**

23 Section 3(18) is amended to read as follows:

24 “(18)(A) The term “harassment” means any  
 25 act that—



1           “(i) has the probability to injure a marine  
2           mammal or marine mammal stock in the wild;

3           “(ii) has the potential to disturb a marine  
4           mammal or marine mammal stock in the wild  
5           by causing biologically significant disruption of  
6           activities, including, but not limited to, migra-  
7           tion, breeding, care of young, predator avoid-  
8           ance, defense, or feeding; or

9           “(iii) is directed toward a specific indi-  
10          vidual, group, or stock of marine mammals in  
11          the wild and is likely to impact the individual,  
12          group, or stock of marine mammals by dis-  
13          rupting behavior, including, but not limited to,  
14          migration, breeding, care of young, predator  
15          avoidance, defense, or feeding.

16          “(B) The term ‘Level A harassment’ means  
17          harassment described in subparagraph (A)(i).

18          “(C) The term ‘Level B harassment’ means  
19          harassment described in subparagraph (A) (ii) or  
20          (iii).”.

21 **SEC. 14. INCIDENTAL TAKINGS OF MARINE MAMMALS.**

22          Section 101(a)(5) of the Marine Mammal Protection  
23          Act of 1972 (16 U.S.C. 1371(a)(5)) is amended—

24                 (1) in subparagraph (A)—

1 (A) by striking “within a specified geo-  
2 graphical region”; and

3 (B) by striking “within that region of  
4 small numbers”;

5 (2) in subparagraph (B)—

6 (A) by striking “within a specified geo-  
7 graphical region”; and

8 (B) by striking “within one or more re-  
9 gions”;

10 (3) in subparagraph (D)(i)—

11 (A) by striking “within a specific geo-  
12 graphic region”;

13 (B) by striking “of small numbers”; and

14 (C) by striking “within that region”; and

15 (4) by adding at the end the following:

16 “(F)(i) Not later than 120 days after the date  
17 of the enactment of the Marine Mammal Protection  
18 Act Amendments of 2003, the Secretary shall issue  
19 a general authorization and implementing regula-  
20 tions allowing the incidental, but not the intentional,  
21 taking of marine mammals of a species or popu-  
22 lation stock in the course of an activity, that will  
23 have a negligible impact on such species or stock.

24 “(ii) Any person seeking to engage in a activity  
25 under the general authorization shall submit to the

1 Secretary via certified mail, by not later than 60  
2 days before the commencement of such activity, a  
3 letter of intent containing the following:

4 “(I) The species or stocks of marine mam-  
5 mals that may be incidentally taken.

6 “(II) The geographic location of the activ-  
7 ity.

8 “(III) The period of time over which the  
9 activity will be conducted.

10 “(iii) Not later than 30 days after receipt of a  
11 letter of intent to conduct an activity under the gen-  
12 eral authorization, the Secretary shall—

13 “(I) determine that the general authoriza-  
14 tion applies with respect to the conduct of the  
15 activity by the person, unless the Secretary  
16 finds that the activity is likely to have an  
17 unmitigable impact on such species or stocks;  
18 or

19 “(II) determine that the general authoriza-  
20 tion does not apply with respect to the conduct  
21 of the activity by the person.

22 “(iv) The Secretary shall promptly send a letter  
23 to the person stating the determination of the Sec-  
24 retary under clause (iii).”.

○